



**IN THE COURT OF THE SUBORDINATE JUDGE OF MELUR.**

Present: Thiru. S. GANESAN, B.Sc., M.A., B.L.,

Subordinate Judge, Melur,

Wednesday, the 1<sup>st</sup> day of March 2023

**O.S.No.17/2021**

R.Ganagavalli @ Gnanamani ..... Plaintiff

// Vs //

C.Usha ..... Defendant

This suit came up on 23.02.2023 for final hearing before me in the presence of Thiru.N.Vallinayagam, Thiru.K.Marimuthu, Thiru.T.Senthilkumar, Thiru.N.Muniyasamy and Thiru.V.N.Arjun, Advocates for the Plaintiff. Thiru.M.Periyakaruppan, Thiru.K.P.Selvam and Thiru.Madhavan, Advocates for the defendant. The defendant called absent and set exparte and upon consideration of entire materials on records and upon hearing the arguments of plaintiff side having stood over for consideration till this day, the court delivered the following:

**J U D G M E N T**

1. This is a suit for recovery of money of Rs.8,90,987/- on mortgage deed together with subsequent interest at the rate of 24% per annum for sum of Rs.5,00,000/- from the date of plaint to till date of realization and appropriate the sale proceeds towards the decree amount and costs.

**2. The plaint averments are that:-**

3. The schedule mentioned properties are situated at Velliyankundram

village, Madurai East (North) Taluk, Othakadai Sub Registration office, Madurai North registration District, Madurai District, Natham UDR R.S.No.89/1 in 12 cents house site building, house tax No.1373, total extent of 5232 sq.ft.

4. The schedule mentioned property absolutely belongs to the defendant, registered sale deed dated 10.07.2008 doc.No.5302/2008 registered at Thamaraiipatti registrar office. The plaintiff lent a sum of Rs.5,00,000/- to the defendant on 22.06.2017 as a mortgage loan and the defendant agreed to create the registered mortgage deed as security for the loan amount. The defendant as the principal borrower have executed a registered mortgage deed, vide doc.No.957/2017 on 22.06.2017 in favour of the plaintiff for a sum of Rs.5,00,000/-. The defendant stood a guarantor and executed a registered mortgage deed in favour of the plaintiff. At the time of borrowing the loan amount from the plaintiff, the defendant has agreed to repay the loan amount with interest at the rate of 1.50% per month compounded monthly and agreed to repay the default interest at the rate of 2% per month. But the defendant has not repaid the loan amount and interest amount. The defendant has lodged a false police complaint as against the plaintiff and defendant has also filed a caveat petition against the plaintiff. The defendant and her henchman's have threatened the plaintiff and her family. Hence, the plaintiff's uncle have lodged a police complaint against the defendant.

5. After receiving the loan amount of Rs.5,00,000/- from the plaintiff, the defendant has not come forward to repay the loan amount with subsequent interest. The defendant has not repaid the loan amount and the defendant committed willful default in the repayment loan amount inspite of repeated demands by the plaintiff by in person and through various persons. Even after the repeated request of the plaintiff, the defendant had not paid the dues to plaintiff.

6. The defendant is not entitled to the benefits of any of the Debt Relief Act or under any other Debt relief scheme. The defendant is legally liable to repay the balance amount of Rs.5,00,000/- with subsequent interest at the rate of 2% per month

till the payment of entire amount due.

#### 7. PARTICULARS OF MORTGAGE

- (a) Date of Mortgage : 22.06.2017(Date of Loan)
- (b) Name of the Mortgagor : The defendant
- (c) Name of the Mortgagee : The plaintiff
- (d) Sum Secured : Rs. 5,00,000/
- (e) Rate of Interest : Rs.1.50 per month (18%)
- (f) Rate of default interest : Rs.2 per month (24%)
- (g) Details of property : As per schedule

8. Further, the defendants has assured if she has failed to discharge the mortgage within the agreed period of three years she is liable to repay the principle sum of Rs.5,00,000/- together with the defaulted interest if any at the rate of Rs.2/- for Rs.100/- per month till making the entire payment. The defendant has executed a equitable mortgage deed on 22.06.2017 in favour of the plaintiff by offering the under mentioned property as security and there is a specific recital in the simple mortgage deed that if the defendant have failed to discharge the loan amount of Rs.8,90,987/-, the plaintiff has every right and liberty to proceed the under mentioned secured property and to realize the loan amounts together with the interest and cost etc., Hence, the suit is filed on recovery of money on mortgage.

#### **9. The defendant filed written statement refuting the averments**

10. Save and except that those of allegations that are herein after admitted expressly and all other allegations made in the plaintiff are all false and are hereby denied.

11. The averments made in para 4,5,6 are denied except the admitted averments. The defendant's husband chowdi ambalam is close friend of plaintiff's husband Rajthilak's grandfather Ramakrishnan. There is several speculative transactions between the defendant's husband chowdi ambalam and the plaintiff's husband Rajthilak's grandfather Ramakrishnan.

12. The defendant's husband Chowdi ambalam running a restaurant in K.Pudur. To develop the hotel business, he searched the money lending persons. When approached one Karmegam, it came to knowledge that Ramakrishnan is lending money for interest. Thereby Chowdi ambalam approached the Ramakrishnan on 20.05.2017 and obtained Rs.5 lakhs, for which 5% interest for Rs.100/- and also commission for Karmegam is 5%. For which, he sought to execute a mortgage in registrar office and also obtained the signatures of the defendant and her husband in some cheques and blank stamp papers. Believing the words of the Karmegam, this defendant's husband on the constraint of the situation, agreed the same and Ramakrishnan also agreed to lend money for Rs.5,00,000/- on execution of equitable mortgage of the defendant's husband house in the name of K.Poornavalli daughter of the plaintiff. On 27.05.2017 as per doc.no.866/2017 the Ramakrishnan gave only Rs.4,30,000/- by deducting monthly interest of Rs.25,000/- and monthly interest of Rs.25,000/- and registration expenses of Rs.25,000/- and totally Rs.70,000/-. The Karmegam also endorsed as a witness in the documents. For the security of the loan he obtained 10 cheques of the defendant's husband of K.V.B bank, Annanagar branch, A/c No.1608172000003623.

13. Further on 20.06.2017 again, the defendant's husband obtained Rs.5,00,000/- loan from the Ramakrishnan. For which, the Ramakrishnan obtained another equitable mortgage in the name of plaintiff's grand son Rajthilak's wife Kanagavalli for the property of the defendant as per doc.no.957/2017. The plaintiff, plaintiff's daughter Poornavalli, her husband Kathiresan, grand son Rajthilak's wife Kanagavalli and Arun obtained the signatures of the defendant and her husband in some cheques and blank stamp papers. In which, only Rs.4,05,000/- has been given as a loan amount by the Ramakrishnan by deducting the interest and other charges. The defendant's husband regularly paid the monthly interest for the loan to the plaintiff's husband Rajthilak's grandfather Ramakrishnan in cash. On 05.08.2017, in order to develop the hotel business further, the defendant's husband again obtained

Rs.10,00,000/- from the Ramakrishnan. Thereby executed doc.no.1840/2017 in respect of the defendant's husband Chowdi's property. Thereby given Rs.7,60,000/- by deducting charges and interest. This defendant and her husband paid Rs.1,00,000/- as interest to the Ramakrishnan for the loan amount of 20 lakhs rupees. Due to the pandemic COVID-19, in Feb 2020, the defendant's husband could not able to run the hotel and pay the interest till May 2020. At this juncture, in May 2019, the plaintiff's husband Rajthilak's grandfather Ramakrishnan, Ramakrishnan's daughter Poornavalli, Poornavalli's husband Kathiresan, grand son Rajthilak, the plaintiff and Arun obtained the signatures of the defendant and her husband in the hotel in May 2019. When asked by the defendant and her husband, they promised that after settling of all loan dues, all the bank papers will be returned to them. On 4.6.2020, the Ramakrishnan called over the phone to the defendant's husband and demanded to pay Rs.60,00,000/- and also threatened that failing which, the blank cheques and stamp papers will be utilized for recovering the amount by manipulating documents. They also said the interest has to be paid over the years. In default of payment, they threatened with dire consequences. Hence, the defendant's husband sent a legal notice on 4.6.2020 to the Poornavalli and Kanagavalli. On 6.6.2020, after obtaining the legal notice the Kanagavalli, Arun and Kathiresan called from cell no.9842899239 and scolded the defendant's husband in filthy language and threatened him. Thereby, a complaint was lodged before Appanthirupathi police station on 05.06.2020. They did not gave any receipt. Thereby another complaint was given to Superintendent of Police, Madurai District on 06.06.2020 for taking action against the Ramakrishnan, plaintiff and his family. After knowing the same, the plaintiff's family threatened over phone on 09.06.2020. On 09.06.2020, the police personnel from Umachikulam police station called the defendant and asked to bring the papers to Appanthirupathy police station. During the search of the documents, the plaintiff and Karmegam called over the phone and threatened the defendant and her husband with dire consequences for the lodging of complaint for collecting exorbitant

interest. Due to which, the defendant attempted to commit suicide and was admitted in Ayyar bungalow BGM hospital. Thereafter one SSI, Rajasekaran of Appanthirupathy P.S. obtained the statement of the defendant for the incident. Thereafter the police did not take any action against the complaint on the pressure of the plaintiff's family by dodging then and there and the police personnel threatening the defendant and her husband for compromise. The Police personnel without registering FIR, colluded with the plaintiff's family and attempted to settle the disputes against the law. Thereafter, they advised the defendant to seek remedy before Civil court. Since the police officials did not take any action, a private complaint was lodged before Judicial Magistrate No-5, Madurai in Cr.m.p.No.1771/2020 against the police S.I. Jeyalakshmi and SSI Rajasekaran, for the offences U/s.4 of Tamilnadu Prohibition of charging Exorbitant Interest Act, 2003 and 147, 148, 166, 406, 420, 468, 506(ii) and 120(b) of IPC pending for enquiry. When the mortgage is pending as per doc.no.957/17 and without discharging the same, that on 22.06.2017, the defendants said to have been executed a sale agreement is totally false. Thereby, caused legal notice on 04.09.2020 without the signature of the counsel with false averments. The plaintiff's family is a money lending family for exorbitant interest. The proceeding for exorbitant act is also pending. In order to escape from the criminal prosecution, this suit has been filed.

14. Further on 18.06.2020, the SI called the defendant's husband and threatened to complete the dispute without going to court. Thereby this defendant's husband lodged complaint against the S.I. Jeyalakshmi and SSI Rajasekaran on 19.06.2020. The same is pending before this court in O.S.No.15/2021. The plaintiff's family is a money lending family for exorbitant interest. The proceeding for exorbitant act is also pending. In order to escape from the criminal prosecution, this suit has been filed.

15. The property is in possession and enjoyment of the defendant. This suit has been filed on the basis of forged and fabricated documents. Hence

prayed to dismiss the suit with costs.

16. Heard, Perused the records. The following issues are framed by this court on 16.02.2022.

1. *Whether the defendant has created equitable mortgage as claimed by the plaintiff?*
2. *Whether the allegations leveled by the defendant in respect of mortgage deed is true?*
3. *Whether the plaintiff is entitled to preliminary mortgage decree?*
4. *To what other relief the plaintiff is entitled?*

17. The plaintiff examined on proof affidavit as PW1 and Ex.A.1 to A5 were marked. No further witnesses and documents adduced on the side of the plaintiff. The defendant failed to cross examine the PW1. Thereby, she become exparte. Hence, the judgment is passed on merits u/o 17 R2 of CPC.

**18. Issue No.1 and 2**

19. Since the issue No.1 and 2 are intertwined, both the issues are taken up for answering.

20. The suit is filed for recovery of money based upon the mortgage. The suit for foreclosure of mortgage filed by the plaintiff.

21. As per the contention of plaintiff, the defendant is the owner of the property by virtue of the sale deed dated 10.07.2008. Which is revealed through the Ex.A3 the certified copy of the sale deed has been produced. Hence, the defendant is proved to be owner of the property.

22. It is also made endorsement in the Ex.A1 that the original sale deed belonging to defendant has been missing. For which, the inspector of police, Oomachikulam given a missing certificate in CSR.No.86/2017 dated 25.04.2017.

23. Coming to the aspect of the execution of the mortgage Ex.A2 is

the registered mortgage deed vide doc.No.957/2017 on 22.06.2017 in favour of the plaintiff for a sum of Rs.5,00,000/-. Thereby the mortgage deed is registered one as per section 17 of the registration act.

24. Coming to the execution and passing of consideration, the defendant categorically admitted in the written statement that the defendant executed the mortgage deed on 22.06.2017 for obtaining loan for her husband from one Ramakrishnan. The execution of the Ex.A1 and also passing of the consideration has been admitted by the defendant. Thereby admitted facts need not be proved u/s 58 of evidence act.

25. As per Ex.A.1 is dated 22.06.2017 and for an amount of Rs.5,00,000/- and time for payment of mortgage money is two years. So the right to foreclosure of property accrues from 22.06.2019. As per "Article 63 of the Limitation Act prescribes a period of 12 years to foreclosure of property mortgaged . This suit was filed on 29.10.2020. Hence, the suit is filed within time of limitation.

26. As per Ex.A1, the defendant received the mortgage money and has not objected to the amount due from the plaintiff till the expiration of the limitation period, Once the mortgage is always a mortgage. Since the plaintiff has demanded to pay the mortgage money with interest, the defendant didn't pay the same as per Ex.A2. The same was revealed through Ex.A2 is the police complaint sent by the plaintiff's uncle. The same was not denied by the defendant.

27. As per Ex.A1 to A4, the plaintiff discharged her initial burden of proving the the mortgage deed. Hence, the Ex.A1 categorically proves that the plaintiff is the mortgagee and the defendant is the mortgagor and the owner of the suit property. Hence, the defendant is duty bound to pay the mortgage money along with interest.

28. In order to contradict the same, the defendant have become silent.

As per the P.W.1 evidence, the plaintiff have discharged the burden and the burden being ambulatory in nature and now cast upon the defendant. Because, the evidence and burden being rebuttable one, it is for the defendant to disprove that she has paid the mortgage money a long with interest. Here, the defendant has not taken any steps on her side by appearing before this court. The plaintiff has discharged the initial burden by proving the facts alleged in the plaint.

29. Hence, inference is drawn as against the defendant in view of the provisions of the evidence act. By computing the period, it reveals that the mortgage money is secured as per Ex.A1. There is no other contradictory evidence available on record. Moreover, the plaintiff also paid the court fees for the foreclosure of the mortgage to that effect.

30. Based upon the statement averments the defendant didn't come forward to substantiate her version. Without which the contention stated by the defendant in the written statement cannot be deemed to be proved. Moreover since the burden is cast upon the defendant, it is for the defendant to disprove the same as per the written statement averments. Hence the defendant become exparte by not come forward to cross examine the plaintiff or to test the veracity of the PW1. So the defendant failed to discharged burden cast upon her. Hence the averments made upon the execution of the Ex.A1 cannot be sustained. Hence the 2 is answered against the defendant. Hence, the issue No.1 and 2 are answered accordingly.

**31. Issue No.3**

32. In view of findings rendered in the issue no.1, the plaintiff has proved the execution of the mortgage deed Ex.A1 and the same was not countenanced by the defendant through any documentary evidence for the discharge. Thereby, inference is drawn as against the defendant in view of the provisions of the evidence act. By computing the period, it reveals that the mortgage money is secured as per Ex.A1. There is no other contradictory evidence available on record.

Moreover, the plaintiff also paid the court fees for the foreclosure of the mortgage to that effect.

33. As per Ex.A1 to A4, the plaintiff discharged her initial burden of proving the the mortgage deed. Hence, the Ex.A1 categorically proves that the plaintiff is the mortgagee and the defendant is the mortgagor and the owner of the suit property. Therefore the plaintiff is entitled to recover Rs.3,90,987/- from the defendant. Hence the 3 is answered against the defendant and infavour of the plaintiff.

**34. Issue No.4**

35. From the findings arrived in issue no.1 to 3, that the plaintiff is entitled to recover Rs.3,90,987/- from the defendant. Coming to the interest aspect, Though, the plaintiff has claimed 24 percent interest per annum for principal amount, but the rate of interest for the period from date of filing of the plaint to till the date of passing of the decree shall be governed by the section 34 of C.P.C. Since the defendant being a woman, it will be opt to impose 6% per annum interest from date of filing of plaint to till realization of the decree amount for the principal is Rs 6% per annum.

36. Considering the facts and circumstances of this case, the plaintiff is entitled to the preliminary decree of foreclosure. The time for compliance is two months. Apart from that the plaintiff is not entitled to any other reliefs.

**37. In the result, the suit is hereby decreed by granting preliminary decree of foreclosure of mortgage and the plaintiff is entitled to recover Rs.8,90,937/- along with interest from the date of filing of plaint to date of decree is fixed as 6% per annum and from the date of decree to till the date of realization for the principle amount Rs.5,00,000/-. The defendant is directed to pay the mortgage decree amount within two months. For final decree liberty**

**granted.**

Directly dictated to the Typist, and typed by her in office computer, corrected and pronounced by me, this the 1<sup>st</sup> day of March 2023.

Sd/-S.Ganesan  
Sub Judge,  
Melur.

**List of Witnesses examined on the side of the Plaintiff:**

P.W.1. R.Gnagavalli @ Gananamani – Plaintiff

**List of documents marked on the side of the plaintiff:-**

- Ex.A.1. 22.06.2017 Registered mortgage deed, vide Original  
doc.No.957/2017
- Ex.A.2 15.07.2020 Police complaint given by the Xerox copy  
plaintiff's uncle
- Ex.A.3 10.07.2008 Registered sale deed doc.No.5302/2008 Certified copy
- Ex.A.4 26.08.2020 Encumbrance certificate Computerized copy
- Ex.A.5 25.04.2017 Missing certificate in CSR.No.86/2017 Original

**List of witnesses and documents on the side of the defendant :- Nil**

Sd/-S.Ganesan  
Sub Judge,  
Melur.

**Fair/Draft Judgment  
O.S.No.17/2021  
Date : 01.03.2023  
SJ, Melur**